BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH

AT BILASPUR

W.P. NO. 2349 /2003

P. R. No. 22/01/03
Presented by Shri V.K. Tamaskar
dated 01/03/03

PETITIONER : K.K. Nath, aged about 61 years
S/o. Late Shri Kamini Kumar Nath
Ex. Assistant Engineer
(Electrical & Mechanical)
Water Resources Department
Government of Chhattisgarh
Office of the Executive Engineer
E/M H.E.M. Division
(Irrigation Department)
Commissioner Compound
Kada Building Bilaspur (C.G.)

VERSUS

RESPONDENTS

1. State of Chhattisgarh
Through Principle Secretary
Water Resources/Irrigation
Department Government of
Chhattisgarh, Mantralaya
D.K.S. Bhawan Raipur (C.G.)

2. Accountant General
Government of Chhattisgarh
Near Fafadih Chowk
Raipur (C.G.)

3. Engineer - In- Chief
Water Resources Department
(Irrigation) Govt. of Chhattisgarh
Civil Line Raipur (C.G.)

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4. Executive Engineer
E/M Heavy Earth Moving
Machinery Division Water
Resources Department
Bilaspur (C.G.)

PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

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(207)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P. 2349/03 सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

11.4.2005

Shri V.G. Tamaskar, counsel for the petitioner.

Shri Akhil Agrawal, Panel Lawyer for the State.

None on behalf of respondent No.2.

By this writ petition under Article 226/227 of the Constitution of India the petitioner has questioned the legality and propriety of the action of the respondents whereby the retiral benefits has not been paid to the petitioner.

The case of the petitioner is that on 28.3.1966 he was appointed as Sub-Engineer in the Irrigation Department of Government of erstwhile State of M.P. After reorganization of the State and coming into existence of the State of C.G. w.e.f. 1.11.2000 the petitioner's service has been allocated to the State of C.G and after attaining the age of superannuation the petitioner has been superannuated w.e.f 31.10.2002, however, he has not been paid the retiral benefits.

Return has been filed on behalf of the respondent No.1, 3 & 4 in which it has been mentioned that the petitioner has not returned 343 tools and plants to the department which are outstanding against him time since when he was posted at (E& M Workshop), Sihora, District Jabalpur (M.P.). The total value of the above tools is Rs.2,46,473/- and inspite of various remainders issued to the petitioner he has not returned those tools and plants. First letter was written by the Sub Divisional Officer (E&M), Light Machineries, Jabalpur on 25.4.1996, thereafter, on 15.7.2003 the Executive Engineer (E&M) Narsinghpur also wrote a letter for returning the

(पीछे देखिये)

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मामला क्रमांक ....WP/2379/03 **सन्** **200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

above tools. An anticipatory pension amounting Rs.5,667/- has been sanctioned to the petitioner w.e.f. 1.11.2002; Rs.2,30,489/- has been paid towards gratuity amount and GPF pass book of the petitioner has been sent to respondent No.2 regarding payment of GPF amount. The respondents No.1, 3 & 4 do not have first entries of deductions made in the head of Family Benefit Fund, therefore, respondent No.4 has sent the service book to the office of the Executive Engineer (E&M HEM Division), Water Resources Department, Satna for entry of deduction. The funds regarding Group Insurance Scheme (GIS) & Leave Encashment could not have been paid due to non-availability of the service records, as the same has been sent to Water Resources Department, Satna, as soon as the service book would be received by the department, all the retiral dues would be paid to the petitioner subject to recovery of outstanding dues against him. In Para-6 of the return it has been mentioned that excess payment and tour advance amount of Rs.22,678/- & Rs.4,700/- are also due against the petitioner, thereby total amount of Rs.2,73,771/- is outstanding against the petitioner herein.

Return has also been filed on behalf of respondent No.2-Accountant General in which it has been mentioned that an amount of Rs.2,02,732/- has already been sanctioned to the petitioner towards GPF amount.

Rejoinder to the return has also been filed on behalf of the petitioner in which it has been mentioned that when the petitioner was transferred in the year 1990 from Sihora to Rewa, in his absence the then Sub Divisional Officer namely Shri R.S. Selot after breaking

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

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open the lock of workshop took away the tools and plants in a truck and report to that effect was also lodged with the police station as well higher officers of the department by the petitioner, but no action was taken.

Officer In-charge of this case Shri J.N. Gupta, Executive Engineer is present in Court. He submits that GPF amount has already been paid to the petitioner and as far as the GIS, Leave Encashment & Family Benefit Fund are concerned, same have also been ascertained and in above three heads the petitioner is entitled for to receive around Rs.1,44,000/-.

Having heard learned counsel for the parties, I have perused the record.

The only allegation levelled by respondent No.1, 3 & 4 against the petitioner herein is that when he was posted at Sihora in the E&M Workshop, he was not able to account for 343 tools and plants which were in his charge. In this connection the petitioner was informed by the respondent Executive Engineer vide letter dated 19.9.1994 that he has not accounted for 343 tools and plants Part-2 account. Thereafter, again on 25.4.1996 the petitioner was asked to return the same and on 4.5.1996 also similar letter was sent to him. Again on 7.5.1996, 22.8.1996, 28.11.2001, 14.12.2001, 30.1.2002, 18.2.2002, 20.3.2002, 5.4.2002 and 15.7.2003 similar letters reminding the petitioner were sent and ultimately vide Annexure R-4 dated 26.8.2003 the Chief Engineer, Mahanadi Pariyozna, Raipur was informed that on account of non-return of said 343 tools and

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

plants by the petitioner herein an amount of Rs.2,46,473/- is due against the petitioner.

The case of the petitioner is that he was transferred from the said post vide order dated 13.7.1990, however, his transfer order was cancelled vide order dated 12.11.1990 and during this period the store was locked. On 21.11.1990 vide Annexure J-2 the then S.D.O. Shri R.S. Selot directed all the employees that the petitioner herein has been relieved from duties, therefore, he should not be allowed to enter into the office and the workshop. On 22.11.1990 the petitioner herein wrote a letter to S.H.O., Police Station Sihora, mentioning therein that SDO, Sihora after breaking the lock on 22.11.1990 at about 8.00 a.m. took away tools and plants in a truck No.MP24/4440. Similar report was sent by him on 3.1.1994 to Superintendent of Police, Jabalpur. The Station House Officer, Police Station Sihora reported the matter to S.P., Jabalpur vide letter dated 13.5.1997 that K.K. Nath i.e. the petitioner herein was transferred in the month of July, 92 to Rewa, since he has not handed over the charge to the then SDO, therefore, the then SDO after breaking the lock of store took away the tools and plants, therefore, this matter appears to be of departmental enquiry. The petitioner also reported the Executive Engineer, Bhopal about the said incident, but no enquiry was instituted by the department about the accountability of said 343 tools and plants.

It is admitted position that no inventory was prepared by the then SDO Shri R.S. Selot while taking away the said tools and plants from the workshop on 22.11.1990 that how many tools and plants

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —5	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

were found in the workshop and how much tools & plants he had took away in the truck. Specific allegation was levelled by the petitioner herein about the breaking of lock by the then SDO R.S. Selot and thereafter, taking away the tools and plants from the workshop, therefore, the senior officers ought to have instituted an enquiry in order to find out that how many tools and plants were lying in the workshop and how many were taken by the then SDO in order to ascertain the liability of the petitioner herein. But unfortunately no such enquiry was instituted or directed by the senior officers and without conducting enquiry a liability has been fastened on the petitioner herein about the 343 tools and plants and he has been held responsible for those tools and plants and a recovery of Rs.2,46,473/- has been fastened on him.

Now the question remains that as to whether the respondents No.1, 3 & 4 are entitled to recover the said amount from the petitioner in view of Rule 65 of the M.P. Civil Services (Pension) Rules, 1976 which envisages that:

> "65. **Recovery and adjustment of Government dues.-** (1) It shall be the duty of every retiring Government servant to clear all Government dues before the date of his retirement.
> (2) Where a retiring Government servant does not clear the Government dues and such dues are ascertainable.-
> a. an equivalent cash deposit may be taken from him; or
> b. out of the gratuity payable to him, his nominee or legal heir, an amount equal to that recoverable on account of ascertainable Government dues shall be deducted.

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

As mentioned above, the respondents are not entitled to fastened the liability on the petitioner unless and until an enquiry was conducted by the respondents in order to find out the liability of the petitioner. As it is admitted position that the then SDO after breaking the lock of workshop, which was in charge of the petitioner herein, took away certain tools and plants and no inventory was prepared as to how many tools and plants were lying in the workshop and how may tools and plants he had took away, therefore, without conducting an enquiry no liability can be fastened on the petitioner.

Now the question remains as to whether at this moment the respondents' No. 1, 3 & 4 are entitled to conduct an enquiry in order to fasten the liability on the petitioner. In this connection Clause (b) of sub-rule (2) of Rule 9 of the Rules of 1976 envisages that:

> *"(b) the departmental proceedings, if not instituted while the Government servant was in service whether before his retirement or during his re-employment:-*
>
> *(i) shall not be instituted save with the sanction of the Governor;*
>
> *(ii) shall not be in respect of any event which took place more than four years before such institution;*

It is admitted position that matter regarding 343 tools and plants pertains to the year 1990 and the petitioner had retired on 31.10.2002, therefore, in view of second paragraph of Clause (b) of sub-rule (2) of Rule 9 of Rules of 1976 now the respondents are not entitled to institute an enquiry to fix the responsibility of the

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	petitioner about 343 tools and plants, as this provision requires that a departmental proceedings shall not be instituted in respect of any event which took place more than four years before such institution. Today, we are in the year 2005, whereas the matter relates to the year 1990, so after lapse of 15 years no such enquiry can be instituted on account of this legal bar and in this respect I am fortified by the judgment of the Hon'ble Apex Court in the matter of **State of U.P. and another Vs. Shri Krishna Pandey** reported in **(1996) 9 Supreme Court Cases 395**. The pension rules of State of U.P. are paramateria with the C.G. Pension Rules of 1976 and in which the Hon'ble Apex Court has held that "*regulation also would indicate that if the officer caused pecuniary loss or committed embezzlement etc. due to misconduct or negligence or dereliction of duty, then proceedings should also be instituted after retirement against the officer as expeditiously as possible. But the events of misconduct etc. which may have resulted in the loss to the Government or embezzlement, i.e., the cause for the institution of proceedings, should not have taken place more than four years before the date of institution of proceedings. In other words, the departmental proceedings must be instituted before lapse of four years from the date of which the event of misconduct etc had taken place. Admittedly, in this case the officer had retired on 31.3.1987 and the proceedings were initiated on 21.4.1991. Obviously, the even of embezzlement which caused pecuniary loss to the State took place prior to four years from the date of his retirement. Under these circumstances, the State had disabled itself by their deliberate omissions to take appropriate action*	

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against the respondent and allowed the officer to escape from the provisions of Regulation 351-A of the Regulations.

Therefore, in view of the above settled position of law and provisions of Rule 9 of the Rules of 1976, the respondents No.1, 3 & 4 are not entitled to deduct the amount of Rs.2,46,473/- as they have not conducted any enquiry in order to fasten the liability on the shoulders of the petitioner herein. As far as the other amount of excess payment of Rs.22,698/- & tour advance of Rs.4,700/- are concerned, respondents No. 1, 3 & 4 are entitled to recover the same from the petitioner unless the same is satisfactorily explained by the petitioner herein.

In the result, the petition of the petitioner is allowed and respondents are directed to release all retiral benefits to the petitioner after doing the needful with respect to the amount of excess payment and tour advance as mentioned above.

Certified as per rules.

Sd/-
L.C.BHADOO
Judge

oshan/-

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